

MSU 4.1-690
Appl. No. 10/776,980
Amendment dated: February 13, 2008
Reply to Office Action mailed November 27, 2007

REMARKS

Claims 1 to 4 are pending. No claims are allowed.

Claims 1 and 2 have been amended to recite that the composition has antioxidant and anti-inflammatory activity. This clearly relates the processing to the result in terms of the composition. The utility of Applicant's novel composition is different from the cited references.

Claims 1 to 4 were rejected under 35 USC 103(a) as being unpatentable over Mann (U.S. Patent No. 6,231,866) in view of Walker et al. (U.S. Patent No. 5,525,341) and Howell et al. (U.S. Patent No. 6,720,353). A careful reading of U.S. Patent No. 6,231,866 to Mann and related case, U.S. Published Application No. 2002/0168429, reveals a different process. The process to produce CRAN-MAX is set forth in Claim 1 of the '866 patent as follows:

1. A method of producing a dietary supplement comprising:
 - (a) expressing juice from one or more fruits thereby yielding a juice portion and a pomace portion;
 - (b) concentrating the juice portion to yield a juice concentrate;
 - (c) mixing the juice concentrate with the pomace portion in an about 1:1 to 1:4 (wt/wt)

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juice concentrate to pomace ratio to yield juice-infused pomace; and then

(d) drying the juice-infused pomace to yield a free-flowing, non-hygroscopic powder formulation to yield the dietary supplement.

It is clear that there is no separation of any components of the fruit except to juice and pomace which still has acids and sugars. There is no suggestion of isolating any of the individual components of the juice by any method much less by an adsorption resin. The juice contains pectin (paragraph [0032] and [0040]) and many other chemicals present in the berries but not present in Applicant's composition. Clearly, the processing makes a difference as emphasized repeatedly by Mann. Pectin is a polysaccharide with a molecular weight of 70,000 to 400,000. It hydrolyzes under acid conditions (Merck Index 11th Edition page 1118 (1989)) and in any event, is different. There is no suggestion, motivation or teaching from this reference or subjective judgment which would suggest Applicant's claimed compositions. In fact, the reference teaches away from the claimed invention by requiring all of the fruit components to be present in the composition (CRAN-MAX).

Thus, it is completely incorrect to suggest in the Office Action:

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"However, no weight is given to the method of making in a composition claim".

Based upon the above discussion, Applicant has established that the product formed by Applicant is materially different from that of Mann. The Applicant determined that the isolated anthocyanins, bioflavonoids and phenolics had antioxidant and anti-inflammatory activity *in vitro*. The compositions of CRAN-MAX are so complex and diluted that one skilled in the art would have no idea of any specific activity.

Turning to the secondary references, Walker et al. deals with extract plants of the genus *Vaccinium*, particularly cranberries. The extract "lacks significant amounts of anthocyanins". It is noted that this patent was not cited as a reference against Mann, no doubt, because of its lack of relevance. Claim 6 of this reference reads:

6. An extract prepared from plants of the genus *Vaccinium* by a method comprising the steps of:
extracting plant material from plants of the genus *Vaccinium* with a reagent selected from the group consisting of: water, alcohol, and water-alcohol mixtures; to produce a liquid extract containing an active fraction having activity to inhibit the adhesion of bacteria to surfaces; and
partially purifying polyphenol, flavonoid, and tannin compounds from said liquid extract

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to produce a refined extract having said activity in a proportion by dry weight which is significantly greater than the proportion present by dry weight of said liquid extract.
(Emphasis added)

The extract of this reference is completely different from either Applicant's composition or Mann's. This reference leads one skilled in the art that it is necessary to remove the anthocyanins. The citation in the Office Action of the Abstract is completely out of context of the invention being described by Walker et al. This reference has nothing to do with Applicant's claimed invention and would not be combined by one skilled in the art under any circumstances with Mann.

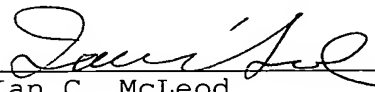
Howell et al. describes the isolation of proanthocyanidin extracts of various plants with anti *E. coli* activity. Again, this is a completely different composition activity from Mann or the present invention. The Howell et al. process is described at column 3, line 46 to column 4, line 29 of the '353 patent. The process involves reverse phase lipophilic chromatography material to produce the proanthocyanidin extract. Thus, Howell et al. uses a chromatography material to extract a different material for a different use. One skilled in the art would not even consider Howell et al. in reference to

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Applicant's invention. Even under the current flexible standards, where obviousness can be subjective judgment, the combination rejection would not render Applicant's invention obvious to one skilled in the art. The references must have some clearly defined relevance to each other which is not present in the rejection. Also, use of hindsight is not permitted. Absent Applicant's disclosure, there is no way that one skilled in the art would derive Applicant's invention from this combination of references. Reconsideration of the combination rejection is requested.

It is now believed that Claims 1-4 are in condition for allowance. Notice of Allowance is requested.

Respectfully,


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